IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9698 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHIMA LIMITED

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9698 of 2002

MR TUSHAR MEHTA for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

MR AS VAKIL for Respondent No. 2

MR DN PATEL for Respondent No.1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 10/07/2003

ORAL JUDGEMENT

1. Rule. Mr.Vakil, learned Counsel appearing for respondent No.2 waives service of notice of rule. Mr.D.N.Patel, learned Standing Counsel, appears and waives service of notice of rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that on 14-11-2000 respondent No.2 issued notice to the petitioner to show case as to why the penalty of Rs.9,14,520/= should not be imposed upon the petitioner towards non-utilisation of the quota extended for shipment during October/December, 1997. The petitioner submitted the reply to the show-cause notice on 11-12-2000 and contended, inter alia, that the petitioner could not utilise the total quantity of extended quota as some of the buyers had at the last moment cancelled their orders and some of them failed to open covering letter of guarantee for orders placed by them. Ultimately on 12-12-2000 the order came to be passed for forfeiture. The petitioner carried the matter before the appellate forum and the said appeal came to be rejected as per the order dated 4-1-2002. The petitioner also preferred appeal to the second Appellate Committee and ultimately as per the decision dated 16-8-2002 the second Appellate Committee also rejected the appeal and under these circumstances the petitioner has approached this Court.

3. I have heard Mr.Nanavati, learned Sr. Counsel appearing with Mr.Tushar Mehta, learned Counsel, on behalf of the petitioner, Mr.D.N.Patel, learned Standing Counsel for respondent No.1 and Mr.A.S.Vakil, learned Counsel for respondent No.2.

4. Mr.Nanavati, under the instructions from his client, has submitted that as such the petitioner Company is one of the huge exporters and the past record of the petitioner Company is very good. He submitted that the petitioner Company has no objection for paying the amount of penalty, but the objection to the petitioner is that it will have a stigmatic effect since the forfeiture order is there. He submitted that such order of forfeiture may also be considered as adverse circumstances in future export of the petitioner. Mr.Nanavati submitted that the figure shown on page 4 of the petition clearly goes to show that the last year's export of the petitioner was of 110.64 crores and, therefore, he submitted that if the Hon'ble Court is inclined to take lenient view of modifying the order by taking care that it will not have stigmatic effect upon the status of the petitioner as exporter, the petitioner

Company would agree for paying the amount involved in the matter. Mr.Nanavati also submitted that respondent No.2 is having bank guarantee and instead of invoking the bank guarantee if the Court ultimately accepts the submission of the petitioner, the petitioner would deposit the said amount by demand draft and after the realisation of the demand draft the bank guarantee may be returned to the petitioner.

5. On behalf of respondent No.2, Mr.Vakil has left the matter to the Court by stating that respondent No.2 would not have any objection in returning the bank guarantee on payment of the amount unless such bank guarantee is required to be invoked for any other items which is subject matter of this petition.

6. Having considered the above and the perusal of the order passed by the authorities and more particularly the decision of the appellate Authority goes to show that the ground shown of not utilising the quota was including that of heavy rain. It is true that during the course of the discussion and submissions the petitioner admitted before appellate authority that they could not surrender un-utilised quota in time due to the mistake of the concerned staff. However, it is required to be considered as to whether such mistake by the concerned staff would attract penalty of forfeiture in such a manner which would have a stigmatic effect. Mr.Vakil, during the course of the arguments, submits that as such the ground of heavy rain fall is nothing but an after-thought and initially the ground was of cancellation of the order and subsequently the ground of rainfall is advanced. In my view, even if the ground of rain fall is not given much importance, the other ground which is taken into consideration by the first Appellate Authority as well as by the second Appellate Authority is that there was mistake of the concerned staff and on account of the same the quota could not be surrendered. In my view, the authority ought to have examined the matter by considering that even if it is admitted as mistake of the concerned staff, whether it would invite a penalty to have a stigmatic effect. Normally when power is vested to any authority for imposing penalty for any breach or otherwise, it should also examine the question of quantum of penalty called for. In a given case it may be to the fullest extent, if it is demonstrated that there was intentional and conscious lapse or fault or that a person has procured benefit therefrom through illegal means. But if both the decisions of the authorities are considered, it appeas that the authorities have not examined the aspect of quantum of

penalty and as to whether lenient view can be taken or not. I am not examining the said aspect in much detail since Mr.Nanavati has fairly agreed for paying the amount which is involved in the matter. The same, in my view, is one of the considerations to test the bonafide on the part of the petitioner. When the petitioner has admitted fairly that there was a mistake of the concerned staff and on account of the same un-utilised quota could not be surrendered in time, it cannot be said that the forfeiture order should be maintained with stigmatic effect and the authority should have been satisfied by recovering the amount of forfeiture with the clarification that it will not have stigmatic effect.

7. In my view the penalty recovery of the amount with stigmatic effect would be harsh considering present facts and circumstances of case and simple recovery of amount without sitgmatic effect would be sufficient since the aforesaid aspect is not concerned by the authority and considering the aforesaid fair stand taken on behalf of the petitioner, I find it proper to modify the order passed by the authority and its confirmation thereof by the Appellate Authority to the effect that the petitioner Company shall be required to be pay the amount of Rs.9,14,520/= towards compensation, but such order of paying compensation will not have any stigmatic effect upon the status of the petitioner as the exporter.

8. In view of the aforesaid, the order of the authority shall stand modified accordingly. The petitioner shall forward the demand draft of Rs.9,14,520/= within a period of 15 days from today and after the realisation of the said amount, if the bank guarantee is otherwise not required, the same shall be returned to the petitioner, save and except, that the same is not required for any other purpose.

9. The petition shall stand allowed accordingly. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

10-7-2003 (Jayant Patel, J.)

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